

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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DAVID COOPER, #7743

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Plaintiff,

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v.

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2:06-CV-418-MHT  
(WO)

D.T. MARSHAL, *et al.*,

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Defendants.

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**ORDER AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

On May 18, 2006 Plaintiff filed a Motion to Amend Complaint. In the motion, Plaintiff states that he incorrectly identified a defendant as “Nurse Miller” and also asserts an additional claim against the defendant(s). In light of the foregoing, the court finds that Plaintiff’s May 18 pleading may also be construed as a request that his complaint against Defendant Nurse Miller be dismissed and that this individual be dismissed as a party to the complaint. Upon consideration of the request, the court concludes that it is due to be granted.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. Plaintiff’s May 18, 2006 pleading, construed as a Motion to Dismiss Defendant Nurse Miller (Doc. No. 6), be GRANTED;
2. Defendant Nurse Miller be DISMISSED with prejudice as a party to this

complaint;<sup>1</sup> and

3. This case be referred back to the undersigned for additional proceedings.

It is further

ORDERED that on or before June 1, 2006 Plaintiff amend his complaint by identifying the individual(s) against whom he wishes to proceed in this action and specifically identify how the conduct or actions of such individual(s) violated Plaintiff's constitutional rights. Plaintiff is cautioned that his failure to comply with this order will result in a Recommendation that this case be dismissed.

It is further

ORDERED that the parties are DIRECTED to file any objections to the Recommendation on or before **May 31, 2006**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual

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<sup>1</sup>In his complaint, Plaintiff alleges that Defendant Jordan subjected him to excessive force. In his motion to dismiss this defendant, Plaintiff states that, pursuant to a plea agreement, he now stands convicted of assaulting Defendant Jordan. The court, therefore, finds that dismissal of this defendant with prejudice is appropriate.

findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981

Done, this 19<sup>th</sup> day of May 2006.

**/s/ Delores R. Boyd**  
DELORES R. BOYD  
UNITED STATES MAGISTRATE JUDGE